

# Satellite Broadcast DOMESTIC VIOLENCE RESTRAINING ORDERS: THE BASICS

This broadcast is for court staff working with the public on domestic violence issues relating to restraining orders. We will explore the critical role of the clerk in this vital area of public service and provide technical guidance that will enable effective and sensitive processing of restraining orders from filing to disposition.

#### **Objectives:**

- Identify the different types of restraining orders and the elements of each type,
- Identify key elements of effective and sensitive service at the counter from filing to disposition, and
- Identify the mandatory requirements for completion of the filing documents.

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1	QUIZ (True or False)						
	If the court does not specify a termination date, the protective order expires in one year.  Personal service of the Restraining Order After Hearing is not required if the person to be restrained was personally served with the Temporary Restraining Order and Notice of Hearing.						
3.	Most domestic violence cases are based on false allegations.						
4.	Women beat men at about the same rate as men beat women.						
5.	The court has 48 hours to make a determination on Request for Order.						

6.	Violence between a man and woman in a hotel is civil harassment.
7.	An Emergency Protective Order (EPO) is effective for 5 judicial and 7 calendar days.
8.	A minor under the age of 18 cannot file a request for protective order.
9.	Removal of firearms is solely at the discretion of the judge and no particular hearing is required.
10.	Parties may agree to mutual protection orders by stipulation.
11.	The court is required to provide five free certified copies of the protective order.
12.	If the parties have a domestic violence restraining order, and there is a criminal protective order also in place, the domestic violence order has priority.



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## Hypothetical Susan and Mark

You are the clerk in your court who reviews applications for temporary restraining orders under the Domestic Violence Prevention Act.

Susan is 17 and has a baby. Her father is a police officer, who kicked her out of the family home when she became pregnant by her boyfriend, Mark. Susan seems to have some problems with substance abuse. She lives with her friend's family, and is coming to the courthouse to file an application for a Temporary Restraining Order (TRO) against Mark.

Mark is 18 and has a good job. He plays on a community basketball team with your brother and is good friends with your brother. Like Susan, he also seems to have some substance abuse problems.

You notice Susan wandering in the hallway of the courthouse with the baby, who is crying. She appears to be lost. It is 4:30 p.m. on Friday; you have an important appointment at 5:00 and were hoping to leave a little early. Susan has brought her Domestic Violence Prevention Act (DVPA) application with her but it is incomplete. It is also the second time she has applied for such an order (she did not come to the hearing for the first order so the temporary order expired). You read her application which contains a threat to take the baby away from Susan that Mark allegedly made that morning. You notice that Susan's version of what has happened between the two of them over the last few weeks is different from what your brother told you recently.

When you tell Susan her papers are incomplete, she starts to cry. She says she is scared to take the bus home as she thinks Mark may be waiting for her outside the courthouse. She also says she can't stay much longer at her friend's house and will soon have no place to go. Just then Mark shows up.

### **Questions:**

1.	Are there issues here that make this a difficult case? What are they?
2.	Would it be hard to be impartial in this situation? If yes, why?
3.	What is your response, as the clerk, to Susan at this point?
4.	What resources are in your courthouse or community that could help you assist Susan?

### DOMESTIC VIOLENCE RESTRAINING ORDERS: THE BASICS Satellite Broadcast

#### DOMESTIC VIOLENCE RESTRAINING ORDER

HOW TO PROCESS A RESTRAINING ORDER

#### **Emergency Protective Order**

Used by law enforcement to get an emergency order over nights and weekends

#### **Temporary Restraining Order**

- \* Request for Order (DV-100
- \* Description of Abuse (DV-101)
- Temporary Restraining Order and Notice of Hearing (DV-110)
- Declaration Re Ex Parte Notice

#### **Ex Parte Hearing**

Some courts will issue the temporary without an ex-parte hearing. Other courts require the party/parties to appear at an ex parte hearing.

#### **Temporary Restraining Order and Notice of Hearing (DV-110)**

Orders issued by the Judge will be in effect until the Restraining Order Hearing date, any orders crossed out are NOT in effect.

#### Filing the forms

The Court Clerk will now file the forms and provide the party with 5 certified copies and one extra copy for the Domestiv Violence Registry (pursuant to procedures in your court).

#### Service of the forms

The person requesting the orders must now have copies of all filed forms personally served on the restrained person, as well as a **blank** Answer to Temporary Restraining Order (DV-120)

#### **Proof of Service (DV-200)**

Once the forms are served on the restrained person, the Proof of Service (DV-200) must be filled out by the person who served the restrained person and filed with the Court.

#### **Answer from Restrained Person (DV-120)**

The person to be restrained may file the answer and serve the person requesting the order. This should be done prior to the hearing

#### **Restraining Order Hearing**

The party must attend this hearing, even if the person to be restained has not yet been served. The court will continue the hearing and re-issue the temporary orders to allow time for service. If the restrained person has been served the Court can issue the restraining order or set a contested hearing.

#### **Contested Hearing**

The party must attend this hearing for the Judge to issue a restraining order.

At this hearing each party may bring evidence and witnesses. The court can either dismiss the case or grant the request for restaining order.

#### Judge Issues the Restraining Order (DV-130)

The Court Clerk will file the order, provide the party with 5 certified copies and make one extra copy to be forwarded to the Domestiv Violence Registry (pursuant to procedures in your court).

#### Serve the Restraining Order After Hearing

The restraining order must be personally served on the restrained person if they were not present at the hearing and the orders differ from the original order and notice of hearing. If the orders do not differ from the initial request the restaining order can be served by mail on the restrained person.

#### Proof of Service (DV-200 or DV-250)

Must be filed with the Court after service on the restrained person.

#### Courtesy of:

Janet Davis, Superior Court of Amador County Linda Daeley, Superior Court of Orange County

# COMPARISON OF PROTECTIVE ORDERS

CHARACTERISTICS/ RELIEF AVAILABLE	DOMESTIC VIOLENCE PROTECTIVE ORDERS	FAMILY LAW ORDERS	<u>CIVIL</u> <u>HARASSMENT</u>	PROTECTIVE ORDER ELDER ABUSE	WORKPLACE VIOLENCE	EMERGENCY PROTECTIVE ORDER
PERSONAL CONDUCT ORDERS	YES	NO	YES	YES	YES	YES
STAY AWAY ORDERS	YES	NO	YES	YES	YES	YES
RESIDENCE EXCLUSION ORDERS	YES	NO	NO	YES	NO	YES
PERSONAL PROPERTY ORDERS	YES	YES	NO	NO	NO	NO
TEMPORARY CUSTODY ORDERS	YES	YES	NO	NO	NO	YES
TEMPORARY VISITATION ORDERS	YES	YES	NO	NO	NO	NO
BATTERER'S TREATMENT/COUNSELING	YES	YES	NO	NO	NO	NO
TEMPORARY CHILD SUPPORT	YES	YES	NO	NO	NO	NO
TEMPORARY SPOUSAL SUPPORT	NO	YES	NO	NO	NO	NO
RESTITUTION/DEBT PAYMENT	YES	YES	NO	NO	NO	NO
ATTORNEY'S FEES/COSTS	YES	YES	YES	YES	YES	NO
FIREARM RESTRICTION	YES	NO	YES	NO	YES	NO
EXPIRATION OF TEMP. ORDER	HEARING DATE	HEARING DATE	HEARING DATE	HEARING DATE	HEARING DATE	5 <sup>TH</sup> COURT OR 7 <sup>TH</sup> CALENDAR DAY (WHICHEVER IS EARLIEST NOT COUNTING DATE ISSUED)
HANDWRITTEN	YES	YES	YES	YES	YES	YES
FILING FEE	NO	YES	YES, IF NO VIOLENCE	NO	YES, IF NO VIOLENCE	NO
WHO MAY REQUEST ORDERS	CURRENTLY/ FORMERLY MARRIED, RELATED BY BLOOD, MARRIAGE OR ADOPTION, LIVE OR FORMERLY LIVED TOGETHER, HAVE HAD A DATING OR ENGAGEMENT RELATIONSHIP, ARE PARENTS OF A MINOR CHILD TOGETHER FC6211	ANY PARTY TO THE ACTION	ANY PERSON NOT FALLING UNDER DVPA OR ELDER ABUSE	AGE 65 OR OLDER AGE 18 TO 64, PHYSICALLY/ MENTALLY LIMITED (CANNOT CARRY OUT NORMAL ACTIVITIES OF PROTECT HIS/HER RIGHTS)	EMPLOYER	LAW ENFORCEMENT
LENGTH OF PERMANENT ORDER	UP TO 3 YEARS	UNTIL MODIFIED	UP TO 3 YEARS	UP TO 3 YEARS	UP TO 3 YEARS	5-7 DAYS

**Courtesy of Janet Davis, Superior Court of Amador County** 

### DOMESTIC VIOLENCE RESTRAINING ORDERS: THE BASICS Satellite Broadcast

Civil Harassment	Domestic Violence
RELATIONSHIP	RELATIONSHIP
Unrelated person	Relatives, In-laws, Relatives by Adoption
	– within the 2 <sup>nd</sup> degree
Related person or relative	Live/lived with, have/had intimate or
-3 <sup>rd</sup> degree or more	dating relationship
All persons who do not fall under DV	Engaged/married or used to be
relationship requirements	engaged/married
	Parents of a child under 18 years
	Voluntary Declaration of Paternity signed
	regarding their children
PROTECTION FROM	PROTECTION FROM
Violence	Bodily injury, including attempts,
	apprehension of imminent bodily injury
Threat of violence	Sexual assault
Stalking	Threats
Actions over a period of time that cause	Stalking
emotional distress	
Harassing phone calls, mail, emails,	Harassing phone calls, mail, emails, faxes
faxes	
	Destroying personal property
	Disturbing the peace
PURPOSE	PURPOSE
Personal conduct orders	Personal conduct/stay-away orders
Stay-away orders	Firearm restrictions
Firearm restrictions	Move-out orders
	Custody/visitation/child support orders
	Record communications
	Property control/debt payment/property
	restraint
	Batterer's treatment
	Payment of attorney fees, costs, lost
FEEC	wages, etc. related to domestic violence
FEES	FEES
Filing fee, in some situations	No filing fee
Service fee, in some situations	No service fee, if done by law
	enforcement